



City of Fairfax

Mayor R. Scott Silverthorne

City Council

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July 23, 2013

Alena Yarmosky
Advocacy & Communications Manager
NARAL Pro-Choice Virginia
P.O. Box 1204
Alexandria, VA 22313-1204

RE: Medical Care Facilities in the City of Fairfax

Dear Ms. Yarmosky:

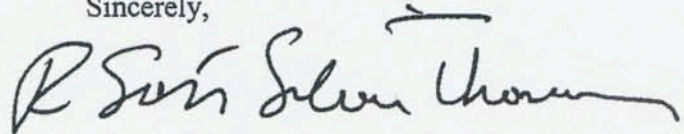
On behalf of myself and the City Council, I appreciate the concerns you shared with me personally following the adoption of a zoning text amendment pertaining to medical care facilities on July 9, 2013, as well as those included in the letter dated July 18, 2013 addressed to me and members of City Council. While I understand that your organization, as well as the other organizations indicated on the letter, are concerned specifically about women's health centers being unfairly targeted, the amendment of the zoning ordinance to define and require special use permits for medical care facilities in commercial districts is in no way targeted at a particular facility or type of facility. In fact, the new language acknowledges that there is a broad range of use types related to medical treatment that have land use impacts that are consistent with those requiring a special use permit.

The special use permit process is a common land use approval process in the City of Fairfax and in other jurisdictions. The process is both transparent and deliberate. Following the testimony of staff, the applicant, and the public, the City Council makes a reasoned determination regarding the impacts of a particular land use at a particular location. In Fairfax, a small city of 6.3 square miles with more than three quarters of its property zoned for residential use (much of which is immediately adjacent to commercial property), the relationship between commercial land uses and residential neighborhoods requires particularly thoughtful consideration. In the same zoning districts in which medical care facilities now require special use permits, the City of Fairfax requires special use permits for: dancing and entertainment within restaurants, drive-throughs at banks and pharmacies, convenience stores, and veterinarian offices, just to name a few. The requirement that these uses receive a special use permit hasn't constituted a ban or substantially constrained their establishment and operation, as I'm sure you've noticed the existence of these types of facilities during your recent visits to our city.

I think you will find that medical care facilities, as well as any particular use type included within that classification, are not disproportionately affected by the City of Fairfax land use approval process. Being a smaller jurisdiction, we process land use applications that come before City Council in an expeditious manner with reasonable fees. We do expect to closely evaluate land use impacts and have tailored our zoning ordinance accordingly. The recent amendment to the zoning ordinance to define and require special use permits for medical care facilities in commercial districts is a continuation of this approach.

In response to the questions in your letter dated July 18, 2013, please see the attached document. Again, thank you for sharing your concerns and I hope you will find this information helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Scott Silverthorne". The signature is fluid and cursive, with a prominent loop at the end.

R. Scott Silverthorne
Mayor

Cc: The Honorable Members of the City Council
Robert Sisson, City Manager

Responses to questions included in letter dated July 18, 2013

What, for the purposes of this specific zoning ordinance, is the definition of "medical clinic"?
The term medical clinic is no longer used in reference to this specific zoning ordinance as the zoning ordinance was amended to include medical care facilities. The definition of medical care facilities is listed below in response to the third question.

What, for the purposes of this specific zoning ordinance, is the definition of "medical office"?
The zoning ordinance was amended to reference physicians or dental offices instead of medical. In accordance with Section 110-4 of the City of Fairfax City Code, "Office means any room, studio, suite or building wherein the primary use is the conduct of a business such as accounting, correspondence, research, editing, administration or analysis; or the conduct of a business by salespersons, sales representatives, or manufacturer's representatives; or the conduct of a business by professionals such as engineers, architects, land surveyors, artists, musicians, lawyers, accountants, real estate brokers, insurance agents, dentists or physicians, urban planners and landscape architects. For the purpose of this chapter, an office shall not involve manufacturing, fabrication, production, processing assembling, cleaning, testing, repair or storage of materials, goods and products; or the sale and/or delivery of any materials, goods or products which are physically located on the premises. An office shall not include a Medical Care Facility."

What for the purposes of this specific zoning ordinance is the definition of "medical care facility"?

In accordance with Section 110-4 of the City of Fairfax City Code, "Medical Care Facility means any hospital, urgent care facility, surgical center, or similar use. Medical Care Facilities shall not include a physician's or dentist's office."

Is a women's health center that provides abortion care automatically categorized as a "medical care facility"? If not, what specific formula is used to determine its classification?

and

Is a physician's office that offers outpatient procedures (colonoscopies, oral surgery, or Lasik surgery, for example) automatically categorized as a "medical care facility"? If not, what specific formula is used to determine its classification?

This response is applicable to both of the questions listed above. A use type that may be classified as a medical care facility will be determined based upon the similarity of its land use impacts to those use types that are explicitly stated in the definition (hospital, urgent care facility, surgical center, or similar use). Land use impacts are principally determined through an understanding of the: primary and accessory uses

of property as identified through the facility's design and arrangement; business plan as described by the owner/operator; hours of operation; vehicle and pedestrian trips; and parking.

For medical care facilities requiring a Special Use Permit, what is the specific formula used by the zoning administrator to determine minimum parking spaces?

In accordance with the Section 110-155(b)(3)s of the City of Fairfax City Code, no less than one space for every 200 square feet of gross floor area is required for medical care facilities. In addition, the zoning administrator (and City Council during a public hearing on the special use permit application) will consider the size of the facility, the number of beds within the facility, and the number of specified persons within the facility. These factors would be presented by the owner or operator as part of the applicant's report filed with the special use permit application. A similar approach to determining the minimum number of parking spaces is used for public and private schools (which also require a special use permit).

What are the specific staff and/or City Council procedures used to evaluate a Special Use Permit Application?

The procedures for a special use permit are included in Section 110-366 of the City of Fairfax City Code. The factors to be considered by City Council, also stated in that section of the City Code, include: consistency with the comprehensive plan and other adopted city goals and policies; the size and shape of the lot on which the use is proposed; vehicular and pedestrian traffic; trip generation characteristics of the proposed use; site design; lighting, noise, traffic, sight, smoke, dust, odor, vibration and other factors which may affect the serenity of the neighborhood; the safety and movement of vehicular traffic upon adjacent streets; the safety and welfare of residents living in the area; the location, height and design of buildings, walls, fences and landscaping proposed; overall impact of the proposed use upon the development and use of adjacent land; safety and welfare of persons working in the neighborhood; harmony of the proposal with the general purpose and intent of the applicable article of this chapter; and the purposes of zoning ordinances set forth in Code of Virginia, § 15.2-2283.

Do neighboring jurisdictions that require Special Use Permits for medical care facilities (Loudoun County, Fairfax County, and Alexandria City, specifically) classify abortion care providers as a type of medical care facility? As such, do these neighboring jurisdictions require abortion providers and not other medical providers of similarly minimally invasive procedures to apply for and be granted a Special Use Permit?

"Abortion care providers" is not listed within the definition of medical care facilities in the City of Alexandria, Fairfax County, or Loudoun County. A determination of what use types are classified as medical care facilities in other jurisdictions would be issued by the zoning administrator from the respective jurisdiction. Each of the

jurisdictions is different in terms of the use types identified in the definition and each jurisdiction's definition indicates that other related facilities would be classified as a medical care facility. The City of Fairfax's recently adopted regulations are substantially consistent with other jurisdictions in that they establish a medical care facility, group more specific medical uses into this general category, and require a special use permit or special exception.